No. 85-732

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

WESTERN AIR LINES, INC.; REPUBLIC AIRLINES, INC; FRONTIER AIRLINES, INC.; AND OZARK AIRLINES, INC.,

Appellants,

v.

BOARD OF EQUALIZATION OF THE STATE OF SOUTH DAKOTA, *et al.*,

Appellees.

On Appeal From The Supreme Court Of The State Of South Dakota

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BRIEF AMICUS CURIAE OF THE AIR TRANSPORT ASSOCIATION OF AMERICA IN SUPPORT OF APPELLANTS

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QUESTION PRESENTED

Section 7(d) of the Airport Development Acceleration Act of 1973 (49 U.S.C. § 1513(d)) forbids a state to assess or tax air carrier transportation property at ratios or rates higher than those imposed on other "commercial and industrial property of the same type." The Act defines "commercial and industrial property" to include property "devoted to a commercial or industrial use and subject to a property tax levy." 49 U.S.C. § 1513(d)(2)(D). Does this definition permit a state to escape § 1513(d)'s prohibition by wholly exempting business property from taxation, while simultaneously imposing a tax on air carrier transportation property?

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BRIEF OF THE AIR TRANSPORT ASSOCIATION OF AMERICA AS AMICUS CURIAE IN SUPPORT OF APPELLANTS

This brief in support of the Appellants is filed with the consent of the parties. Letters from the parties stating their consent have been filed with the Clerk of the Court.

STATEMENT OF INTEREST OF AMICUS CURIAE

The Air Transport Association of America ("ATA") is a trade and service association headquartered in Washington, D.C. ATA has thirty-one member airlines[1/] which provide daily scheduled service throughout the United States.

ATA member airlines, including the Appellants herein, are concerned that Section 7(d) of the Airport Development Acceleration Act of 1973 is construed properly to achieve the goal of that provision. If South Dakota's interpretation of Section 7(d) spreads to other states, then all of ATA's members will experience a significant adverse impact on their abilities to operate in interstate commerce. For this reason, ATA has a significant interest in the outcome of this case.

STATEMENT OF THE CASE

Prior to 1978, South Dakota taxed commercial and business personal property. In 1978, South Dakota revised its personal property tax scheme and

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1/ The member airlines of ATA are: AirCal, Inc., Air Canada, Alaska Airlines, Inc., Aloha Airlines, Inc., American Airlines, Inc., Braniff, Inc., Continental Airlines Corporation, CP Air, Delta Air Lines, Inc., Eastern Air Lines, Inc., Evergreen International Airlines, Inc., Federal Express Corporation, The Flying Tiger Line, Inc., Frontier Airlines, Inc., Hawaiian Airlines, Inc., Jet America Airlines, Inc., Midway Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Airlines, PSA-Pacific Southwest Airlines, Inc., Purolator Courier Corporation, Republic Airlines, Inc., TranStar Airlines Corporation (formerly Muse Air Corporation), Trans World Airlines, Inc., United Airlines, Inc., United Parcel Service, USAir, Inc., Western Airlines, Inc., and World Airways, Inc.

exempted from taxation all personal property not centrally assessed. S.D. Codified Laws § 10-4-6.1.

The tax on airline flight property imposed by S.D. Codified Laws §§ 10-29-2, -8, however, remained unaffected by the 1978 revision since that tax -- like the tax imposed upon railroads and other public service and utility companies -- was assessed centrally by the State Department of Revenue.[2/] By this method of property classification by exemption, South Dakota "legally" discriminated against airline personal property by

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2/ Central assessment was retained for airlines, railroads, telephone and telegraph companies, electric utilities, and pipelines. See S.D. Codified Laws §§ 10-6-34.1, -29-2, -28-1, -33-10, -34-8, -35-2, and -37-9.

imposing a tax on airline property not imposed upon the vast majority of personal property in South Dakota dedicated to commercial and industrial use.

By 1982, Congress had become aware that airlines, like surface transportation common carriers, were the object of tax practices imposed by states which discriminated against interstate commerce moving by air.[3/]

Drawing upon prior legislation intended to end such discriminatory treatment suffered by the railroad,

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3/ ATA President Paul R. Ignatius testified that four states had adopted constitutional provisions which classified airline property as utilities in order to tax airline property at a higher rate. Hearings Before the Subcomm. on Aviation, House Committee on Public Works and Transportation, 97th Cong., 1st Sess. 216-17 (1981).

trucking and bus industries,[4] Congress amended Section 7 of the Airport Development Acceleration Act of 1973, 49 U.S.C. § 1513, to prohibit the "assessment, levying, or collecting of taxes on [air carrier] property in a manner different from that of other commercial and industrial property."[5] Specifically,

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[4] Railroad Revitalization and Regulatory Reform Act of 1976, Pub.L. No. 94-210 § 306(1)(a), 90 Stat. 54, recodified at 49 U.S.C. § 11503 (hereinafter the "4-R Act"); Motor Carrier Act of 1980, Pub.L. No. 96-296, § 31(a)(1), 94 Stat. 823, codified at 49 U.S.C. § 11503a; Bus Regulatory Reform Act of 1982, Pub.L. No. 97-261, § 20, 96 Stat. 1102, amending 49 U.S.C. § 11503a to include bus transportation property.

[5] H.Con.Rep. No. 97-760, 97th Cong., 2nd Sess. 722, reprinted in 1982 U.S. Code, Cong. & Admin. News 1190, 1484. Codified at 49 U.S.C. § 1513(d), this amendment was enacted as § 532 of the Airport and Airway Improvement Act of 1982, Pub. L. No. 97-248, 96 Stat. 671, 701.

Congress prohibited states from assessing air carrier property at a ratio to fair market value higher than the ratio used to assess other commercial or industrial property, and from levying or collecting taxes based on such an assessment. 49 U.S.C. §§ 1513(d)(1)(A) and (B). States were further prohibited from applying a discriminatory tax rate to airline property. 49 U.S.C. § 1513(d)(1)(C).

On the basis of Section 1513(d), the appellants herein sued the South Dakota Board of Equalization to obtain a refund of their 1982 personal property taxes, and challenged the assessment made against their personal property for the year 1983.[6] The Circuit Court for

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[6] See Appellants' Brief for a full description of the proceedings below.

the Sixth Judicial Circuit (Hughes County) denied the refund claims and upheld the 1983 assessments, holding that the tax was a proper "in lieu" tax permitted under 49 U.S.C. § 1513(d)(3).

On appeal, the South Dakota Supreme Court reversed the holding that the tax on airline flight property was an "in lieu" tax, but nevertheless affirmed the judgment.

Despite the unmistakable purpose and intent of Congress in enacting this remedial legislation, the South Dakota Supreme Court held that discrimination under section 1513(d)(1) is a fortiori impossible because, by definition, the comparison class of property is limited to "property . . . devoted to a commercial or industrial use and subject to a

property tax levy."[7/] Since under South Dakota law only centrally assessed property is subject to a tax levy, the court refused to compare, for purposes of section 1513(d) analysis, personal property devoted to commercial or industrial use which was classified exempt for ad valorem tax purposes. Western Airlines, Inc. v. Hughes County, 372 N.W.2d 106 (S.D. 1985).

Justice Henderson did not concur in this literal and mechanistic analysis employed by the majority. Recognizing that the majority's analysis would result in unreasonable and "absolute"

7/ "Commercial and industrial property" is defined in 49 U.S.C. § 1513(d)(2)(D) to mean "property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy."

discriminatory taxation of airline flight property, Justice Henderson argued that the court should adopt the reasoning employed by the Supreme Court of North Dakota in Northwest Airlines, Inc. v. State Board of Equalization, 358 N.W.2d 515 (N.D. 1984). The court in Northwest, considering a tax scheme nearly identical to the South Dakota tax scheme, held that:

> assessing and taxing the Airline's personal property while exempting other commercial and industrial personal property from taxation is prohibited by 49 U.S.C. § 1513(d).

Id., 358 N.W.2d at 517.

Acting on the notice of appeal and jurisdictional statement filed herein, this Court noted probable jurisdiction. ___ U.S. ___ (February 24, 1986).

SUMMARY OF ARGUMENT

1. The Supreme Court of South Dakota, in sustaining the state's tax on airline flight property, reached a decision which is in absolute opposition to the fundamental purpose of 49 U.S.C. § 1513(d). Congress enacted § 1513(d) to prohibit states and municipalities from taxing airline commercial and industrial property differently from other commercial and industrial property. Both the language of the statute itself and the legislative history make this abundantly clear.

The court below, however, ignored this mandate to achieve an absurd and incongruous result. Fundamental rules of statutory construction espoused by this court clearly require that whenever possible, a statute is to be construed to give effect to its stated

purpose, and unreasonable results are to be avoided. The court below, however, ignored these principles and literally applied a definition which, under the facts of the case, was clearly inconsistent with the statute's purpose.

2. By exempting from taxation virtually all commercial and industrial personal property in the State except for airline property and the property of only a few other entities not at issue here, South Dakota has promulgated a property classification system which results in absolute discrimination. Cases construing § 306 of the Railroad Revitilization and Regulatory Reform Act of 1976, 49 U.S.C. § 11503, which § 1513(d) is ultimately patterned after, have held that this provision prohibits classification schemes which

result in discriminatory taxation. It is incomprehensible to believe that for purposes of § 1513(d) analysis, Congress would prohibit partial exemptions from the comparison class, but would allow complete exemptions.

The legislative history surrounding the use of the phrase "subject to a tax levy" as used in § 1513(d) to define commercial or industrial property supports an interpretation that Congress simply used this phrase in a shorthand fashion to exclude from the comparison class property traditionally exempted from taxation, such as property owned by churches or charities. Such an interpretation is consistent with the overriding purpose of § 1513(d) and further supports those cases which prohibit discriminatory classification systems.

ARGUMENT

THE SOUTH DAKOTA SUPREME COURT FAILED TO CONSTRUE SECTION 1513(d) IN ACCORDANCE WITH ITS PURPOSE

1. The Purpose of Section 1513(d) is to Prohibit All Forms of Discriminatory Property Taxation of Airline Personal Property.

The purpose of § 1513(d) is manifestly clear from the language of the statute itself. Congress unambiguously declared anathema state taxing schemes which discriminate against air transportation property moving in interstate commerce:

> (d)(1) The following acts unreasonably burden and discriminate against interstate commerce and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:
> (A) assess air carrier transportation property at a value that has a higher ratio to the true market value of the air carrier transportation property

> than the ratio that the assessed value of other commercial and industrial property of the same type in the same assessment jurisdiction has to the true market value of the other commercial and industrial property;
> (B) levy or collect a tax on an assessment that may not be made under subparagraph (A) of this paragraph: or
> (C) levy or collect an ad valorem property tax on air carrier transportation property at a tax rate that exceeds the tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

49 U.S.C. § 1513(d) (Supp. II, 1984).

House Conference Report No. 97-760, supra, confirms that the purpose of Section 1513(d) is to prohibit discriminatory property tax practices.

Section 7 of the Airport Development Acceleration Act of 1973, 49 U.S.C. § 1513, was passed initially by Congress to relieve airlines and consumers from the burden of proliferating local taxes

on interstate transportation services. Aloha Airlines, Inc. v. Director of Taxation, 464 U.S. 7, 9-10 (1983). Consistent with this remedial purpose, Congress appended the new provision as subsection (d) of Section 1513. This simple act is yet another manifestation of the intent of Congress in passing § 1513(d). Clearly, the purpose of the provision as a whole, and of § 1513(d) in particular, is to protect airlines operating in interstate commerce from burdensome and discriminatory tax treatment by states and municipalities.

2. Section 1513's Purpose Guides the Manner in Which it is Construed.

Well established rules of statutory construction teach us that legislation such as Section 1513(d), enacted to

remedy an existing problem,[8/] should be construed liberally in order to effectuate its purpose. Piedmont and Northern Railway Co. v. Interstate Commerce Commission, 286 U.S. 299, 311-12 (1932). Moreover, where, as here, a provision is susceptible to alternative constructions, the alternative which best serves that purpose is applied. Lawson v. Suwannee Fruit and Steamship Co., 336 U.S. 198 (1949). One commentator has noted that the manifest reason and obvious purpose for a law should not be sacrificed to a literal interpretation of its words. 2A Sutherland Statutory Construction § 46.07 (4th Ed. 1984). Similarly, this Court has stated on many occasions that the law favors a rational

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8/ Supra, n. 3.

and sensible construction, and that absurd and unreasonable results should be avoided. American Tobacco Co. v. Patterson, 456 U.S. 63, 71 (1982); United States v. Bryan, 339 U.S. 323 (1950).

The decision below by the South Dakota Supreme Court is just such a result to be avoided. In surprisingly parochial fashion, the court did not give any consideration to the remedial purpose of Section 1513(d), but mechanically applied the statute to reach a decision totally and utterly at odds with its purpose.

In comparison, the North Dakota Supreme Court refused to countenance a nearly identical provision of its own

tax laws.[9/] Northwest Airlines, Inc., supra.

In Northwest, the court had before it the question of whether the State's tax on airline personal property violated Section 1513(d) because of the exemption afforded by the State to virtually all other commercial and industrial personal property. Addressing the argument advanced by North Dakota that the definition of commercial and industrial property should be read literally, the North Dakota Supreme Court stated:

> The construction urged by the State would allow discriminatory taxation of air carrier transportation property as long as the state imposed no tax at all on other commercial and

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9/ Section 57-02-08(25), N.D.C.C. (1982).

industrial property. We cannot reasonably so construe the statute.

> The intent of Congress . . . was to prohibit discriminatory state taxes because of the adverse effect of such discrimination on interstate commerce. In that light, we cannot assume that a law which completely exempts all property (not usually exempt because of its charitable or eleemosynary character) except airline property and other property not relevant here was not meant to be covered by the Act. Interpreting 49 U.S.C. §1513(d) as the State would have us do would permit greater discrimination when the property is completely exempt than when it is taxed, but at a lower rate. That is unreasonable . . . statutes must be construed to avoid ludicrous and absurd results.

Northwest Airlines, Inc., supra, at 517, emphasis added (citations omitted).

Thus, the North Dakota Supreme Court was unable to justify a result which would have been absurd in light of the purpose of § 1513(d).

In Lawson v. Suwannee Fruit and Steamship Co., supra, this Court had before it the problem of construing § 8(f)(1) of the Longshoremen's and Harbor Workers' Compensation Act of 1927, 44 Stat. 1424, to determine liability as between the Second Injury Fund and the employer-respondent. Specifically, the Court was faced with the issue of whether Congress intended to use the term "disability" in § 8(f)(1) as defined elsewhere in the statute, or in its ordinary sense. 336 U.S. at 201-202.

In reaching its decision, the Court reviewed the legislative history of the second injury provisions. The Court found that the purpose of the second injury provision was to protect handicapped workers from discrimination, and

to protect employers who hire previously injured employees from liability out of proportion with work related injuries suffered by such employees.

Because of this overriding purpose, the Court concluded that the statutory definition of "disability" would not be applied mechanically to defeat the purpose of creating the fund:

> If we read the definition into § 8(f)(1) in a mechanical fashion, we create obvious incongruities in the language, and we destroy one of the major purposes of the second injury provision: the prevention of employer discrimination against handicapped workers. We have concluded that Congress would not have intended such a result.

Lawson, 366 U.S. at 201.

Just as the North Dakota Supreme Court was compelled to avoid a construction producing "ludicrous and absurd" results, the rules of statutory con-

struction embraced by this Court require that the decision below be reversed. It defies any degree of common sense to believe that Congress would have intended to prohibit discrimination by means of partial exemptions from taxation while permitting states to discriminate against air carrier property by totally exempting from taxation whole classes of property. Such a construction truly turns §1513 on its head.

SOUTH DAKOTA'S SCHEME OF CLASSIFICATION BY EXEMPTION VIOLATES SECTION 1513(d)

1. Section 1513(d)'s Prohibition Extends to Discriminatory Classification Systems.

South Dakota law states that personal property "which is not centrally assessed is hereby classified for ad

valorem tax purposes and is exempt from ad valorem taxation." S.D. Codified Laws § 10-4-6.1 (emphasis added). By its own terms, this provision is a property classification system. South Dakota's classification system, however, is based not on the nature of the property, but on the manner of assessment, a standard which is completely arbitrary.

From hearings conducted on predecessor bills leading to the enactment of § 306 of the 4-R Act,[10/] it is clear

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10/ As noted in H.Con.Rep. 97-760, supra, § 1513(d) is based specifically on § 31 of the Motor Carrier Act. In Arkansas-Best Freight System, Inc. v. Lynch, 723 F.2d 365 (4th Cir. 1983), the Court noted that the language of § 31 parallels § 306 of the 4-R Act, and that the legislative history of the 4-R Act is relevant to interpreting § 31 of the Motor Carrier Act. For the reasons stated in Arkansas-Best, the legislative

that Congress had serious concerns about state property tax classification systems, such as South Dakota's, which were based on a standard other than the character of the property.[11/]

Accordingly, section 306 of the 4-R Act has been held to prohibit property classification systems which result in discriminatory taxation of railroad personal property. Ogilvie v. State Board of Equalization, 657 F.2d 204 (8th Cir.), cert. denied, 454 U.S. 1086 (1981); State of Tennessee v. Louisville

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(continued from previous page)

history of the 4-R, Act and cases interpreting that Act, are likewise relevant to a proper construction of § 1513(d).

11/ Discriminatory Taxation of Common Carriers: Hearings Before the Subcommittee on Surface Transportation of the Senate Commerce Committee, 90th Cong., 1st Sess. 71 (1967).

& Nashville R. Co. 478 F.Supp. 199 (M.D.Tenn. 1979), aff'd mem., 652 F.2d 59 (6th Cir.), cert. denied, 454 U.S. 834 (1981).

In Clinchfield Railroad Co. v. Lynch, 784 F.2d 545 (4th Cir. 1986), North Carolina granted stored tobacco inventory a statutory reduction and taxed such property at only 60 percent of its fair market value. Clinchfield and other railroads sued North Carolina, claiming a violation of § 306 of the 4-R Act.

In considering North Carolina's argument that the 4-R Act does not prevent a state from classifying property, the court stated:

> Certainly, the 4-R Act does not encroach upon the State's right to tax its citizens as it sees fit, so long as that tax does not discriminate against railroads. The problem . . . is not that it grants tax breaks for certain agricultural products. But the problem is that if states are allowed to grant tax reductions to an increasing number of property items without taking into account the effect of the taxation of railroad property, the antidiscriminatory spirit and intent of § 306 would soon be swallowed up in the exceptions.

Clinchfield R. Co., supra, at 552 (emphasis added).

The reasoning of the Fourth Circuit is wholly applicable in this instance. By exempting from taxation all but only a few types of industrial and commercial personal property, South Dakota has caused the "antidiscriminatory spirit and intent" of § 1513(d) to be "swallowed up." Although the South Dakota classification system may have administrative efficacy, when its application to airline personal property is considered in light of § 1513(d), its

discriminatory effect is clear and unmistakable. Airline personal property is subject both to a discriminatory assessment ratio and a discriminatory rate because South Dakota has excluded from the comparison class other commercial or industrial personal property in the same assessment jurisdiction (in this case, the entire state). The South Dakota classification system blatantly violates the fundamental purpose of § 1513(d).

2. The Legislative History Exhibits Congressional Intent to Limit the Types of Property to be Excluded From the Comparison Class.

As noted in the House Conference Report accompanying § 1513(d),[12/] this

12/ H.Con.Rep.No. 97-760, 97th Cong., 2nd Sess. 722 (1982), reprinted in 1982 U.S. Code, Cong. & Admin. News 1190, 1484.

provision was intended to make applicable to airlines the same protection afforded to motor carriers by 49 U.S.C. § 11503a. Section 11503a, in turn, is based upon § 306 of the 4-R Act. The legislative history to § 306 has been held applicable to understanding § 11503a.[13/] It is appropriate, therefore, for this Court to consider the legislative history of § 306 in understanding the intent of Congress in passing § 1513(d); more specifically, what Congress meant when it used the phrase "subject to a tax levy."

In defining commercial or industrial property as property "subject to a tax levy," Congress intended to limit the extent to which the states could

13/ Supra, n. 10.

classify property so as to be excluded for comparison purposes under § 306.[14/] Congress intended that states be allowed to exclude from the comparison class of commercial or industrial property only such property that was historically classified exempt for taxation purposes, such as property owned by churches and charitable institutions. See S.Rep.No. 91-630, 91st Cong., 2d Sess. 11 (1969). Had Congress not used this shorthand phrase, it would have had to enumerate all of the traditional exemptions from

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14/ Congress did not intend, however, to interfere with the right of a state to classify property among the traditional categories of real property, tangible personal property and intangible personal property. S.Rep.No. 1483, 90th Cong., 2nd Sess. 1 (1968) accompanying S. 297, and S.Rep.No. 630, 91st Cong., 1st Sess. 1 (1969) accompanying S. 2289.

taxation granted by each State, a task that needlessly would have complicated the legislation .

That Congress did not intend or expect states to exclude from the comparison class property which was traditionally taxed, whether assessed centrally or locally, is brought home by the fact that, prior to its passage, Congress considered and rejected amendments to the 4-R Act which would have allowed states to "grandfather" discriminatory property classifications authorized by their constitutions. S.Rep.No. 94-585, 94th Cong., 1st Sess. 138-139 (1975); H.R.Rep. No. 94-781, 94th Cong., 2d Sess. 166 (1976). "Congress was unwilling to create any type of exemption whereby a state would not have to comply with [§ 306] . . . ."

Ogilvie v. State Board of Equalization, 657 F.2d 204, 208 (8th Cir. 1981) (footnote omitted). Accord, State of Tennessee v. Louisville and Nashville R. Co., 478 F.Supp. 199, 202 (M.D.Tenn. 1979), aff'd mem., 652 F.2d 59 (6th Cir.), cert. denied, 454 U.S. 834 (1981).

This legislative history of § 306 is important to a proper construction of § 1513(d). Only by ascertaining Congressional intention may a court give effect to the legislative will. Watt v. Alaska, 451 U.S. 259, 266 (1981) ("The circumstances of the enactment of particular legislation may persuade a court that Congress did not intend words of common meaning to have their literal effect."); United States v. American Trucking Associations, Inc., 310 U.S. 534, 542 (1940).

In passing § 1513(d), Congress sought to achieve the same result it had achieved in passing § 306. As with § 306, Congress intended to prohibit property classification systems which would discriminate against airline personal property.

The literal interpretation of § 1513(d) advanced by the appellees and embraced by the Court below ignores Congress' intent to limit exclusions from the comparison class of property to types of property traditionally exempted from taxation, such as church or charitable property.

Rather than advance the usefulness of § 1513(d), the literal approach adopted by the court below serves to undermine the fundamental purpose of the legislation, to prohibit discriminatory

tax treatment and, in fact, it led the South Dakota Supreme Court to the absurd result of allowing "absolute" discrimination. That the situation at bar was unforeseen by Congress when it passed § 1513(d) does not prevent the statute from being applied in a manner consistent with its purpose. Browder v. United States, 312 U.S. 335, 339-40 (1940). To do otherwise would make the passage of § 1513(d) a futile act.

CONCLUSION

In this statutory construction case, the language of 49 U.S.C. § 1513(d) clearly illuminates Congress' intention to prohibit discriminatory taxation of airline personal property by states and municpalities. The purpose of this provision is confirmed by the legislative

history. For this reason and the reasons stated hereinabove, South Dakota's tax on airline flight property discriminates against airline personal property moving in interstate commerce in violation of § 1513(d). The judgment of the Supreme Court of South Dakota should be reversed.

Respectfully submitted

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